

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:17-CV-303-D

PERNELL THOMAS,

Plaintiff,

v.

CAL-MAINE FOODS, INC., and
CAL-MAINE FOODS, INC. EMPLOYEE
STOCK OWNERSHIP PROGRAM,

Defendants.

ORDER

On October 24, 2017, Cal-Maine Foods, Inc., and Cal-Maine Foods, Inc. Employee Stock Ownership Program (“defendants”) moved to dismiss plaintiff’s complaint [D.E. 12] and filed a memorandum in support [D.E. 13]. See Fed. R. Civ. P. 12(b)(6). Plaintiff did not respond in opposition.

The court has considered the complaint under the governing standard. See Fed. R. Civ. P. 12(b)(6). The court agrees with the argument in defendants’ memorandum of law. Plaintiff’s ERISA claim is barred because he failed to exhaust administrative remedies and due to the statute of limitations. Plaintiff also cannot simultaneously pursue relief for benefits and breach of fiduciary duty. Moreover, plaintiff’s common law breach of contract claim is preempted, and plaintiff’s claim for documents fails because he is not a participant in the Cal-Maine Employee Stock Ownership Program. See [D.E. 13].

In sum, the court GRANTS defendants’ motion to dismiss [D.E. 12] and dismisses plaintiff’s complaint without prejudice.

SO ORDERED. This 11 day of December 2017.



JAMES C. DEVER III
Chief United States District Judge